IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6886 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALVANTSINH S RAHEVAR

Versus

GEB

Appearance:

MR TR MISHRA for Petitioner No. 1-22

MR MD PANDYA for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 12/09/2002

ORAL JUDGEMENT

1. This is a petition filed under Article 226 of the Constitution of India invoking the protection of the petitioners' fundamental rights guaranteed by Articles 14 and 16 of the Constitution of India.

2. The petitioners herein are 23 in number. The details of their respective posting are given at

Annexure-A to the petition. Suffice it to say that firstly each and everyone of the petitioners is a Civil Mistry, and that each of them is working as a Civil Mistry in the departments or sub-divisions as mentioned in Annexure-A. It may be mentioned here that the only aspect of importance for the purpose of the present petition is that each of the petitioners is a Civil Mistry and that each of them claims the same scale of pay as is available to and as is being paid to Civil Mistries working as such in Ukai Division, which is commonly referred to as "Civil Mistries-Ukai".

3. The petitioners contend that the Civil Mistries working as such in other divisions of the respondent Board are doing the same work as Civil Mistries-Ukai, and that therefore there should not be any discrimination in the pay-scale granted or allowed to Civil Mistries working at different places or at different sub-divisions of the respondent Board. In other words, the petitioners contend that they would be entitled to the same pay-scale and the same consequential benefits as are in fact being paid to and enjoyed by Civil Mistries-Ukai.

4. In furtherance and in support of the aforesaid contention, the petitioners have referred to and relied upon an award delivered by the Industrial Tribunal, Baorda dated 19th August 1994. This award is at Annexure-B to the petition. It requires to be noted that this is a common award in four references, and that the prayers made by the workmen in the said four references was identical and the relief granted by the said award is also identical in respect of the four workmen concerned in the said four references.

5. Certain basic common features arising from the consideration of the said award require to be noted. Firstly, all the four workmen who had approached the Industrial Tribunal in separate and individual references, were all Civil Mistries. Secondly, two of the workmen in two separate references were working as Civil Mistries at Bharuch, whereas the other Civil Mistries were working as such at Navsari. However, all the four workmen had prayed for and had been granted parity of scale with Civil Mistries-Ukai by the common judgement and award in the said four references.

6. What requires to be noted is that the common judgement and award delivered in the aforesaid four references directed the respondent Board to grant the same scale of pay to the concerned workmen as was being paid to Civil Mistries-Ukai, with consequential benefits.

7. It also requires to be noted that this award was accepted by the respondent Board and was not challenged any further.

8. It would, therefore, appear that the basic contention raised by the petitioners in the present petition is well founded. The only prayer made in the present petition is that the petitioners herein should be granted the same scale as is granted and paid to Civil Mistries-Ukai, as evidenced by the award at Annexure-B to the petition, which has been accepted by the respondent Board and complied with.

9. It is, therefore, obvious that, shorn of irrelevant and redundant side issues, what the petitioners substantially pray for in the petition is only that the petitioners, irrespective of where they are working, should be granted the same time-scale as Civil Mistries-Ukai on the fundamental principles of "equal pay for equal work".

10. Obviously there cannot be any legitimate resistance to this constitutional assertion. The fact that all Civil Mistries, no matter where they work and no matter under which sub-division they work, all do the same kind of work and the same quantity of work and the same nature of work as the Civil Mistries-Ukai, cannot be disputed in the light of the award at Annexure-B, which has been accepted by the respondent Board.

11. Learned counsel for the respondent sought to raise a contention that this relief prayed for cannot be simply granted by applying the basic principle as aforesaid, because in fact the Civil Mistries-Ukai are in two categories. Consequently it would be necessary to factually deal with each category and to classify each of the 23 petitioners into either of the two categories, or in a given case, hold that a given petitioner does not fall into any of the two categories.

12. This contention is misconceived and cannot be entertained for a number of reasons.

12.1 Firstly, the assertion that Civil Mistries-Ukai fall into two categories is a new contention being raised for the first time. This contention had not been raised before the Industrial Tribunal in the reference which resulted in award at Annexure-B to the petition. Secondly, this contention, if entertained, would necessitate a deep and probing inquiry on various

questions of fact, which cannot be entertained in a petition under Article 226 of the Constitution of India. Thirdly, even assuming for the sake of argument that Civil Mistries-Ukai could possibly be divided into two categories, it makes no difference in law or in principle. Even for the sake of argument if it were assumed that Civil Mistries-Ukai can be differently categorised and even if we were to assume that they come not in two categories, but in 22 categories, it would still make no difference because irrespective of the category, all Civil Mistries-Ukai fall in the same scale/grade. It is precisely the equality with the grade of Civil Mistries-Ukai which the petitioners seek and pray for. The petitioners do not ask for any other scale or grade of any other Civil Mistry and/or any other scale or grade applicable to any other post.

13. In the premises aforesaid, once it is found on the question of fact (as evidenced by the award at Annexure-B) that Civil Mistries employed by the respondent Board, no matter where they are working or under which sub-division they are working, all do the same work and the same nature of work and the same quantity of work as the Civil Mistries-Ukai, they are entitled to parity of scale/grade. Obviously, therefore, the relief prayed for in the present petition cannot be denied to the petitioners.

14. In the premises aforesaid, it is directed that the respondent Board shall pay to each of the petitioners the salary/wages in the same pay-scale as is paid to Civil Mistries-Ukai, with effect from the date on which each of the petitioners was regularly appointed or confirmed as Civil Mistry. It is further held and directed that the respondent Board shall pay to each of the petitioners all consequential benefits which would flow from the above direction.

15. Accordingly it is so held and directed and rule is partly made absolute to the aforesaid extent with no order as to costs.

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